



## THE STATE BAR OF CALIFORNIA

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DATE: April 22, 2008

TO: Members, Board Committee on Stakeholders

FROM: Stephanie Choy, Managing Director, And Legal Services Trust Fund Program

SUBJECT: Title 3, Rules 3.60 - 3.92 of the Rules of the State Bar, re Legal Services Trust Fund Program - Authorization to Release for Public Comment

### **EXECUTIVE SUMMARY**

Authorization is requested to release for public comment proposed newly rewritten rules for the Legal Services Trust Fund Program. This proposal is part of the State Bar's rules revision project that began in 2006. In January 2008, the Board acted on the first set of revised rules for the trust fund program when rules for IOLTA accounts were adopted for the Rules of the State Bar, Title 2, which deals with rights and responsibilities of members. In this agenda item, the proposed trust fund program rules deal with the Legal Services Trust Fund Commission and grants funded by the program. The proposed rules would be placed in Title 3, which deals with programs and services.

A public comment period of forty-five days is suggested. The comment period would run from May 16, 2008 through June 30, 2008. If no substantive revisions are required by the comment received, the Board could consider adoption of the rewritten rules at its July 2008 meeting.

Board members with questions about the proposal may contact Stephanie Choy at (415) 538-2249 or [stephanie.choy@calbar.ca.gov](mailto:stephanie.choy@calbar.ca.gov), or contact Mary Yen at (415) 538-2369 or [mary.yen@calbar.ca.gov](mailto:mary.yen@calbar.ca.gov)

### **BACKGROUND**

The rules revision project will integrate the State Bar's more than two dozen sets of rules into one comprehensive structure and make the rules simpler, clearer, and more uniform. Revising these sets of rules into the new structure, called "Rules of the State Bar", requires the collaboration of many subject matter experts and is being undertaken in stages. The Board adopted the organizational scheme for the Rules of the State Bar at the July 20, 2007 meeting.

The revised rules simplify syntax, eliminate redundancies, and update usage to comply with conventions established in Rule 1.5 of the California Rules of Court: "must" is mandatory; "may" is permissive; "may not" means not permitted to; "will" expresses a future contingency rather than a mandatory duty; and "should" expresses a preference or nonbinding recommendation.

Under the rules revision project, procedural steps that are likely to change, such as those in an application process, are moved to forms rather than spelled out in the rules. Similarly, fees and

due dates are moved to the State Bar's Schedule of Charges and Deadlines, which can be easily updated by Board action each year. The Rules of the State Bar are also not intended to recapitulate all relevant legal authority on the topic or to serve as operational procedures.

At the January 2008 meeting, the Board adopted a related set of revised rules for IOLTA (Interest on Lawyers Trust Accounts) to implement AB 1723. This assembly bill was enacted in 2007 to increase the yield on IOLTA by requiring attorneys to hold IOLTA at financial institutions that offer rates comparable to those paid to other depositors with similar accounts.

The revised rules that are the subject of this agenda item govern the Legal Services Trust Fund Commission and the administration of grants funded through the Legal Services Trust Fund Program. This agenda item requests a 45-day public comment period.

## **SUMMARY OF PROPOSAL**

The Rules Regulating Interest-bearing Trust Fund Accounts For The Provision Of Legal Services To Indigent Persons (IOLTA rules) were adopted nearly twenty-six years ago and were last amended nearly six years ago. In addition to an out-dated title, the rules are not organized by topic and the sections lack titles. These deficiencies present readability barriers for infrequent readers.

The syntax of the IOLTA rules also needs simplification. For example, Rule 2 includes a sentence of nearly 100 words where the subject ("the applicant") is separated from the predicate ("may establish") by more than 50 words: "Notwithstanding the above provisions, *an applicant* which is a California nonprofit corporation and which provided as its primary purpose and function legal services without charge to indigent persons but which operated in previous years as a project within an organization providing substantial services other than legal services to indigent persons or as an entity other than a corporation *may establish* its status as a qualified legal services project and its proportionate entitlement to funds based upon financial statements which strictly segregate that portion of the organization's expenditures in prior years which were devoted to legal services for indigents." (subject and predicate in italics.) The proposed rules revision uses simple syntax in short sentences, when possible.

Substantive changes to update the rules are also incorporated:

- The title of the program rules would be changed to reflect the expanded charge of the Legal Services Trust Fund Commission. In addition to administering the IOLTA funds, the commission administers other funds remitted to the Trust Fund Program, such as Equal Access Funds and the newly created Justice Gap Fund.
- The rewritten rules would incorporate an existing policy that the Board adopted in 1999 when the Equal Access Fund was established, but which was never incorporated into the current rules. That policy sets forth the role of the Judicial Council in appointing seven members of the Commission. (Proposed rule 3.62(B))
- Proposed rule 3.81(F) would obligate a grant recipient to pay any noncompliance fees set forth in the Schedule of Charges and Deadlines. Staff proposes this addition as a means of encouraging grantees to file timely reports.
- Provisions regarding complaints and other requests for review would be revised. Current rules authorize complainants and grant recipients to seek Board review of commission decisions. Under the new rules, decisions to close a complaint would be

final as to complainants at the commission level. Staff does not recall any complaints since the 1981 inception of the Trust Fund Program that have been reviewed beyond the commission level; and, moreover, third-party complaints only pertain to a grantee's eligibility or services in which the third-party has no direct interest – the complaints do not include practice of law claims for which the State Bar has other procedures and remedies. For grant applicants or recipients, the proposed rules would add a provision for an applicant or recipient to request commission reconsideration of a decision to deny or terminate funding. Grant applicants and recipients would continue to be authorized to seek review by the State Bar Court of such a decision.

## **LENGTH OF PUBLIC COMMENT PERIOD AND REASON**

A comment period of 45 days is requested. The comment period would run from May 16, 2008 to June 30, 2008. The 45-day period is adequate because these rules primarily impact the approximately 100 IOLTA-funded programs, which will be invited to provide comment on these proposed rules.

A rules committee of the Legal Services Trust Fund Commission worked with State Bar staff. On the recommendation of the rules committee, the Commission approved this request to the Board of Governors that the proposed rules be sent out for comment, particularly from the legal aid community. After public comment, the Commission will make a recommendation to the Board of Governors for action at the July Board meeting.

## **EFFECTIVE DATE OF PROPOSAL**

Immediately following Board approval.

## **FISCAL IMPACT**

No fiscal impact is anticipated.

## **RULE AMENDMENTS**

This proposal would add new rules 3.60 through 3.92 to Title 3 of the Rules of the State Bar and it would repeal the Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons.

## **BOARD BOOK IMPACT**

There is no known board book impact.

## **PROPOSED BOARD COMMITTEE ACTION**

Should the Board Committee on Stakeholders agree with the proposed recommendation, adoption of the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Stakeholders authorizes for publication for a forty-five day comment period the proposed Title 3 rules 3.60 through 3.92 (Legal Services Trust Fund Program) for the Rules of the State Bar, in the form attached; and it is

**FURTHER RESOLVED** that publication of the foregoing is not, and shall not be construed as, a recommendation of approval by the Board Committee.

Attachments:

Title 3 proposed rules 3.60 through 3.92 (Legal Services Trust Fund Program)

Current Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons